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Attorneys for Defendant
WALMART INC.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL BREEDING,

Plaintiff,

vs.

WALMART INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 1:23-cv-00300-KJM-KJN

AGREED CONFIDENTIALITY ORDER

Action Filed: January 25, 2023
Removal Filed: February 28, 2023

AGREED CONFIDENTIALITY ORDER

The parties have agreed to and have submitted to the Court, and for good cause shown the Court hereby enters, the following Confidentiality Order:

1 1. This Order shall govern the disclosure of materials designated as Confidential
2 Material in this litigation. Confidential Material, as used in this Order, shall refer to any document
3 or item designated as Confidential or Highly Confidential – Attorneys’ Eyes Only, including but not
4 limited to, documents or items produced during discovery, all copies thereof, and the information
5 contained in such material. Nothing in this Order shall require any party to produce any specific
6 documents or category of documents which a party deems inappropriate for production.

7 **Definitions of Confidential Material**

8 2. Confidential Material, as used in this Order, consists of the following materials and
9 categories of materials:

10 a. Materials relating to any privileged, confidential, or nonpublic
11 information, including, but not limited to, trade secrets, research,
12 design, development, financial, technical, marketing, planning,
13 personal, or commercial information, as such terms are used in the
14 California Evidence Code and Code of Civil Procedure and any
15 applicable case law interpreting Code of Civil Procedure section
16 2031.060; contracts; non-public compilations of retail prices;
17 proprietary information; vendor agreements; personnel files;
18 claim/litigation information; and nonpublic policies and procedures
19 shall be deemed Confidential.

20 b. Materials containing corporate trade secrets, nonpublic research and
21 development data, including, but not limited to, cost data, pricing
22 formulas, inventory management programs, and other sales or
23 business information not known to the public; information obtained
24 from a non-party pursuant to a non-disclosure agreement; and
25 customer-related Protected Data shall be deemed Highly Confidential
26 – Attorneys’ Eyes Only.

27 c. Protected Data shall refer to any information that a party believes in
28 good faith to be subject to federal, state or foreign data protection laws

1 or other privacy obligations. Examples of such data protection laws
2 include but are not limited to The Gramm-Leach-Bliley Act, 15 U.S.C.
3 § 6801 et seq. (financial information); and, The Health Insurance
4 Portability and Accountability Act and the regulations thereunder, 45
5 CFR Part 160 and Subparts A and E of Part 164 (medical information).
6 Certain Protected Data may compel alternative or additional
7 protections beyond those afforded Highly Confidential – Attorneys’
8 Eyes Only material, in which event the parties shall meet and confer
9 in good faith, and, if unsuccessful, shall move the Court for
10 appropriate relief.

11 The parties shall not designate as confidential information that is already public knowledge.

12 3. The parties agree that such Confidential Material as described in paragraph 2 should
13 be given the protection of an order of this Court to prevent injury through disclosure to persons other
14 than those persons involved in the prosecution or defense of this litigation.

15 **Procedure for Designating Information as Confidential**

16 4. To designate information as confidential, the producing party shall mark Confidential
17 Material with the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY.” Parties shall submit confidential discovery responses, such as answers to
19 interrogatories or answers to requests for admissions, in a separate document stamped with the
20 appropriate legend designating those responses as Confidential Material. The Receiving Party may
21 make copies of Confidential Material and such copies shall become subject to the same protections
22 as the Confidential Material from which those copies were made.

23 a. Information on a disk or other electronic format (e.g., a native
24 format production) may be designated confidential by marking the
25 storage medium itself (or the native file’s title) with the legend
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY.” The Receiving Party shall mark any
28 hard-copy printouts and the storage medium of any permissible copies

1 of such electronic material with the corresponding legend contained
2 on the original and such copies shall become subject to the same
3 protections, as the Confidential Material from which those copies were
4 made.

5 b. Information disclosed at any deposition of a party taken in this
6 action may be designated by the party as confidential by indicating on
7 the record at the deposition that the information is confidential and
8 subject to the provisions of this Order. Alternatively, the party may
9 designate information disclosed at the deposition as confidential by
10 notifying the court reporter and other parties in writing, within fifteen
11 (15) business days of receipt of the transcript, of the specific pages and
12 lines of the transcript which are designated as confidential. The parties
13 may agree to a reasonable extension of the 15-business-day period for
14 designation. Designations of transcripts will apply to audio, video, or
15 other recordings of the testimony. During such 15-business-day
16 period, the entire transcript shall receive confidential treatment. Upon
17 such designation, the court reporter and each party shall affix the
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” legend to the designated pages and
20 segregate them as appropriate.

21 5. A producing party may change the confidentiality designation of materials it has
22 produced, as follows: (1) The producing party must give the receiving parties notice of the change
23 by identifying the documents or information at issue. Once notice is given, the receiving party must
24 make good-faith efforts to ensure that the documents or information are accorded treatment under
25 the new designation. (2) Within fifteen (15) business days after giving notice, the producing party
26 must reproduce the documents or information in a format that contains the new designation. (3) If
27 such information has been disclosed to persons not qualified pursuant to paragraphs 12-13 below,
28 the party who disclosed such information shall (a) take reasonable efforts to retrieve previously

disclosed Confidential Material; (b) advise such persons that the material is Confidential; and (c) give the producing party written assurance that steps (a) and (b) have been completed.

Data Security

6. The Parties agree to provide adequate security to protect data produced by the other party(ies) or by non-parties. This includes secure data storage systems, established security policies, and security training for employees, contractors and experts. Adequate security also includes such measures as data encryption in transit, data encryption at rest, data access controls, and physical security, whether hosted/outsourced to a vendor or on premises. At a minimum, any receiving party subject to the terms of this Confidentiality Order, will provide reasonable measures to protect non-client data consistent with the American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 477R.

Clawback Provisions

7. The production of privileged or work-product protected documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding.

8. This Order shall be interpreted to provide the maximum protection allowed by Cal. Code of Civil Procedure section 2031.285 and shall be enforceable and granted full faith and credit in all other state and federal proceedings by 28 U.S. Code § 1738. In the event of any subsequent conflict of law, the law that is most protective of privilege and work product shall apply.

9. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

10. If the receiving party has reason to believe that a produced document or other information may reasonably be subject to a claim of privilege, then the receiving party shall immediately sequester the document or information, cease using the document or information and cease using any work product containing the information, and shall inform the producing party of the beginning BATES number of the document or, if no BATES number is available, shall otherwise inform the producing party of the information.

11. A producing party must give written notice to any receiving party asserting a claim of privilege, work-product protection, or other ground for reclaiming documents or information (a “clawback request”). After a clawback request is received, the receiving party shall immediately sequester the document (if not already sequestered) and shall not review or use that document, or any work product containing information taken from that document, for any purpose. The parties shall meet and confer regarding any clawback request.

Who May Receive Confidential and Highly Confidential Information

12. *Confidential Material.* Any Confidential Material and the information contained therein shall be disclosed only to the Court, its staff, in-house counsel and outside counsel of record for each party, and also shall be disclosed on a need-to-know basis only to the parties, counsel’s staff personnel, employees of a party to whom disclosure is necessary in connection with the preparation for and trial of this action, and any witnesses in the case (including consulting and testifying experts) as may from time to time reasonably be necessary in prosecution or defense of this action.

13. *Highly Confidential—Attorneys’ Eyes Only Material.* Material and information designated as “Highly Confidential—Attorneys’ Eyes Only” shall only be disclosed to the Court, its staff, in-house and outside counsel of record for each party, the secretarial, clerical, and paralegal staff of each, and consulting and testifying experts retained by a party in this action.

14. *Restriction on Disclosure to Direct Competitors.* Notwithstanding the foregoing, Confidential Material shall not be disclosed to any current or former employees of, or current or former consultants, advisors, or agents of, a direct competitor of any party named in the litigation. If a Receiving Party is in doubt about whether a particular entity is a direct competitor of a party named in this lawsuit, then before disclosing any Confidential Material to a current or former employee, consultant, advisor, or agent of that entity, the Receiving Party’s counsel must confer with counsel for the Producing Party.

15. *Persons Receiving Confidential Information Must Sign Exhibit A.* Counsel for each party shall advise all persons to whom Confidential Material is disclosed pursuant to this Order of the existence of this Order and shall provide all such persons (other than the Court and its staff) with

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1 a copy of this Order. Counsel shall also require such persons to execute the Affidavit attached as
2 ***Exhibit A***, prior to the disclosure of Confidential Material.

3 16. *Duties in the Event of Unauthorized Disclosures.* It shall be the obligation of counsel,
4 upon learning of any unauthorized disclosure or threatened unauthorized disclosure of Confidential
5 Information, or any other breach or threatened breach of the provisions of this Order, to promptly
6 notify counsel for the Producing Party. The notification shall be supplemented with reasonable
7 details of the circumstances of the disclosure in order to permit the producing party to understand
8 and take appropriate steps. Each party and its counsel agree to take reasonable and good-faith efforts
9 to contain or limit any breach promptly upon receiving notice of it, and to make reasonable and good-
10 faith attempts to retrieve any unauthorized disclosure of documents or information. This provision
11 does not limit the producing party's entitlement to damages resulting from any breach of this Order.

12 **Authorized Uses of Confidential Material**

13 17. Confidential Material shall only be used for the purpose of litigating the above-
14 captioned lawsuit and may not be used in other lawsuits.

15 18. Persons having knowledge of Confidential Material and information due to their
16 participation in the conduct of this litigation shall use such knowledge and information only as
17 permitted herein, and shall not disclose such Confidential Material, their contents or any portion or
18 summary thereof to any person(s) not involved in the conduct of this litigation.

19 19. If any person having access to the Confidential Material herein shall violate this
20 Order, he/she may be subject to sanctions by the Court and may be liable to pay for the damages
21 caused by his/her violation.

22 **Challenges to the Designation of Confidential Material**

23 20. Any party or interested member of the public may move the Court to modify the
24 designation of any documents or information produced in this litigation (either to include additional
25 protection with respect to confidentiality or to remove a confidential designation). Before making
26 such a motion, the party or an interested member of the public shall first attempt to resolve such
27 dispute with the producing party's counsel. Pending resolution of any challenges to the designation
28 of documents or information, the material at issue shall continue to be treated as Confidential

Material until ordered otherwise by the Court. The burden shall be on the party seeking to modify the designation to show that the producing party's designation is inappropriate.

Withholding of Information

21. *Non-relevant Attachments.* The parties will not produce non-relevant attachments that are attached to relevant emails. When an attachment is withheld, either for privilege or non-responsiveness, the producing party shall produce a one-page TIFF image (or PDF if production format dictates) in place of the withheld attachment, correspondingly stating "Attachment Withheld-Privileged" or "Attachment Withheld-Nonresponsive", and bearing a sequential BATES number within the family BATES range. If any attachment to an email contains responsive content, then the cover email shall be produced for context, regardless of the cover email's responsiveness. The cover email may be redacted in part to remove sensitive information, as described below.

22. *Redactions.* The parties may redact (1) information that is privileged or protected from discovery as work product or by reason of any other applicable privilege or immunity; (2) information subject to non-disclosure obligations imposed by governmental authorities, law or regulation (e.g., protected personal information); and (3) sensitive, non-relevant information, including but not limited to personally identifiable information, trade secrets, or information regarding products, data, or people. Privilege redactions will state, over the redacted portion, "Redacted-Privileged," and all other redactions will state, "Redacted-Nonresponsive." Redactions of emails will not redact the names of recipients or the subject line of the emails, unless the subject line is itself privileged or contains the sensitive information described above, in which case only so much of the subject line will be redacted as may be needed. The parties will produce redacted documents in TIFF format (or searchable PDF if production format dictates; or in native format for file types that do not convert well to TIFF/PDF, such as Excel files) with corresponding searchable OCR text and the associated metadata for the document, ensuring the redacted content is fully protected from disclosure.

Confidential Material In Filings, Hearings, and Trial

23. *Confidential Material in Filings.* Without written permission from the Producing Party or court order secured after appropriate notice to all interested persons, a party may not file

Confidential Material in the public record in this action (or in any other action, such as an appeal). A party that seeks to file under seal any Confidential Material must comply with Federal Civil Local Rule 141. Confidential Material may only be filed under seal in a manner prescribed by the Court for such filings.

24. *Manner of Sealing.* In the event Confidential Materials or portions of transcripts are sealed as confidential by the Court or as described in paragraph 23 above, they shall be filed in an envelope bearing the following designation when deposited:

CONFIDENTIAL

IN ACCORDANCE WITH THE CONFIDENTIALITY ORDER OF THE COURT, THE CONTENTS OF THIS ENVELOPE SHALL BE TREATED AS CONFIDENTIAL AND MUST NOT BE SHOWN TO A PERSON OTHER THAN THE COURT, ATTORNEYS IN THIS CASE, OR TO PERSONS ASSISTING THOSE ATTORNEYS.

25. *Confidential Material in Hearings and Trial.* The provisions of this Order shall not affect, and this Order does not limit, the *admissibility* of Confidential Material (or references to that material) as evidence at trial, or during a hearing or similar proceeding in this action. Prior to using Confidential Material or the information contained therein at any hearing that is open to the public, the party seeking to use the Confidential Material must give at least seven (7) days advance notice to the producing party of the intent to use the Confidential Material so that the producing party may seek an appropriate Court Order to protect the Confidential Material.

Continuing Effect of this Order and Duty to Destroy

26. This Order shall continue to be binding throughout and after the conclusion of this litigation, including all appeals. Within thirty (30) days of settlement or final adjudication, including the expiration or exhaustion of all rights to appeal or petitions for extraordinary writs, each party or non-party to whom any materials were produced shall, without further request or direction from the Producing Party, promptly destroy all documents, items or data received including, but not limited to, copies or summaries thereof, in the possession or control of any expert or employee. This requirement to destroy includes all documents, not only those documents designated as Confidential

1 Material. The Receiving Party shall submit a written certification to the Producing Party by the 30-
2 day deadline that (1) confirms the destruction/deletion of all Confidential Material, including any
3 copies of Confidential Materials provided to persons required to execute Exhibit A (Affidavit), and
4 (2) affirms the Receiving Party has not retained any copies, abstracts, compilations, summaries or
5 any other format reproducing or capturing any of the Confidential Material. Notwithstanding this
6 provision, outside counsel is entitled to retain an archival copy of filings, depositions, and deposition
7 exhibits.

8 **Procedure if Confidential Material Is Required to be Produced**

9 27. If any person receiving documents covered by this Order is served with a subpoena,
10 order, interrogatory, or document or civil investigative demand (collectively, a “Demand”) issued in
11 any other action, investigation, or proceeding, and such Demand seeks material that was produced
12 or designated as Confidential Material by someone other than the Receiving Party, the Receiving
13 Party shall give prompt written notice by hand or electronic transmission within five (5) business
14 days of receipt of such Demand to the party or non-party who produced or designated the material
15 as Confidential Material, and shall object to the production of such materials on the grounds of the
16 existence of this Order. At the request of the party or non-party who produced or designated the
17 material as Confidential Material, the Receiving Party shall refuse to comply with the Demand unless
18 (a) ordered to do so by a court with jurisdiction over the Receiving Party; or (b) released in writing
19 by the party or non-party who designated the material as Confidential Material. The burden of
20 opposing the enforcement of the Demand shall fall upon the party or non-party who produced or
21 designated the material as Confidential Material. Compliance by the Receiving Party with any order
22 of a court of competent jurisdiction, directing production of any Confidential Material, shall not
23 constitute a violation of this Order.

24 **Application of this Order to Productions by Third Parties**

25 28. This Order may be used by third parties producing documents in connection with this
26 action. Third parties may designate information as Confidential or Highly Confidential – Attorneys’
27 Eyes Only.

28 ///

29. If a third party produces (or intends to produce) documents and does not designate (or does not intend to designate) those documents as Confidential Material, then any party to this action may seek to designate that third party's documents or categories of documents as Confidential Material. In that case, it will be the burden of the party seeking protected status to move for a court order designating the materials as Confidential Material after the parties confer.

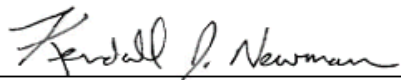
30. In the event additional parties join or intervene in this litigation, the newly joined party(ies) shall not have access to Confidential Material until its/their counsel has executed and, at the request of any party, filed with the Court the agreement of such party(ies) and such counsel to be fully bound by this Order.

31. The parties agree that nothing in this Order shall be deemed to limit the extent to which counsel for the parties may advise or represent their respective clients, conduct discovery, prepare for trial, present proof at trial, including any document designated Confidential Material as set forth herein, or oppose the production or admissibility of any information or documents which have been requested.

32. This Order shall remain in full force and effect until such time as it is modified, amended, or rescinded by the Court.

IT IS SO ORDERED.

Dated: December 19, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

Respectfully stipulated to and submitted by,

DATED: December 14, 2023

JAURIGUE LAW GROUP

By: /s/ S. Sean Shahabi (as authorized on 12/14/23)
Michael J. Jaurigue
S. Sean Shahabi
Ashley Silva-Guzman

Attorneys for Plaintiff DANIEL BREEDING

DATED: December 14, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: /s/ Haidy M. Rivera

James T. Conley

Haidy M. Rivera

Attorneys for Defendant WALMART INC.

EXHIBIT A TO CONFIDENTIALITY ORDER

AFFIDAVIT OF COMPLIANCE WITH CONFIDENTIALITY ORDER

1. My name is _____. I live at _____. I am working on behalf (or at the direction and engagement) of _____.

2. I am aware that a Confidentiality Order has been entered in the above-captioned lawsuit. A copy of this Confidentiality Order has been given to me, and I have read and understand the provisions of same.

3. I acknowledge that documents and information designated as confidential and/or highly confidential pursuant to such Confidentiality Order ("Confidential Materials") are being disclosed to me only upon the conditions that I agree (a) to be subject to the jurisdiction of this Court, and (b) to comply with that Order. I hereby agree to abide by such Order, subject to all penalties prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the documents and information given confidential treatment under the Confidentiality Order entered in this case will be used by me only to assist counsel for the parties in preparing for litigation of the above-captioned matter. I understand that any use of such Confidential Material in any manner contrary to the provisions of the Confidentiality Order may subject me to the sanctions of this Court for contempt and to liability for any damages caused by my breach of the Confidentiality Order.

4. I shall not disclose nor permit to be reviewed or copied said Confidential Materials, or any information derived from, by any person other than the parties and counsel for the parties or members of their staff.

5. Within 30 days after the above-captioned lawsuit ends in a final non-appealable order, I agree to destroy all Confidential Materials in my possession.

DATED: _____, 202_

Signature

Printed Name

Exhibit A, Affidavit of Compliance with Confidentiality Order